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SALES—DELIVERY—PASSING OF TITLE.—Plaintiff sued the defendant to recover possession of two carriages sold to the latter to be paid for on delivery. The defendant failed to pay as agreed, but the plaintiff allowed him to keep possession of the carriages and use them; being influenced so to do, by the promises of the defendant to pay later. The defendant having failed to keep any of these promises, the plaintiff sued to recover possession of the goods. *Held*, where a sale is for cash on delivery and the seller delivers the goods but the buyer fails to pay, the right of property does not pass with the possession; but, if the seller is tardy or negligent in asserting his right to retake the property, the delivery is absolute and title passes. *Frech v. Lewis*, (1907), — Pa. —, 67 Atl. Rep. 45.

There seems to be some difference of opinion among the courts regarding the passing of title in such cases. In the principal case, STEWART, J., says: "In some jurisdictions the right of property is held to pass with delivery, unless at the time the right to retake is expressly declared by the seller. We have not gone so far. Our cases proceed on the theory that until payment has been made, or waived, the contract remains executory, and that delivery in such cases is not a completion of the contract, except as an intention to so regard it be implied from the circumstances attending." In support of the rule were cited *Leedom v. Philips*, 1 Yeates 527; *Bowen v. Burk*, 13 Pa. St. 146; *Backintoss v. Speicher*, 31 Pa. St. 324; *Mackanness v. Long*, 85 Pa. St. 158. In *Smith v. Lynes*, 1 Selden 41, the court held that the delivery of goods without exacting payment raised a presumption that the delivery was absolute; and that the vendor is presumed to have abandoned the security he had provided for the payment of the purchase money, and to have elected to trust the personal security of the vendee. To the same effect are *Martin v. Wirts*, 11 Ill. App. 567; *Hammett v. Linneman*, 48 N. Y. 399; *Parker v. Baxter*, 86 N. Y. 586. In the principal case, it seems that the burden is on the defendant if sued in replevin, to show that the condition of payment was waived; while, in the other cases, it is on the plaintiff to rebut the presumption of waiver.

SALES—PASSING TITLE—RESCISSION—FRAUD.—The plaintiffs sued in detinue to recover a mule from the purchaser from their vendee. The latter, by means of misrepresentations as to his personal identity, induced the plaintiffs to sell to him, and put him in possession of the mule, giving the plaintiffs his notes together with a mortgage on the property sold, to secure them. The defendant was a bona fide purchaser for value. *Held*, that where plaintiffs intended that title should pass, although induced to make the sale by the fraudulent representations as to the buyer's identity, plaintiffs were not entitled to recover the mule from the bona fide purchaser of the buyer because of such fraud. *Hickey v. McDonald Bros.* (1907), — Ala. —, 44 So. Rep. 201.

The principal case is supported by some authority, but the weight of authority and principle seem to be against it. In *Edmunds et al. v. Merchants' Despatch and Transportation Company*, 135 Mass. 283, it was held that if a person fraudulently representing himself to be another, buys, in person,